

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____)	
)	
E. GLUCK CORPORATION,)	
	Plaintiff,)	Civil Action No.:
)	08 Civ. 3466 (VM)(RLE)
)	ECF Case
	v.)	
)	
ADAM ROTHENHAUS,)	Filed Electronically
	Defendant.)	
)	
_____)	

DECLARATION OF ADAM ROTHENHAUS

I, Adam Rothenhaus, state as follows:

1. I am the Defendant in this action.
2. After 5 p.m. on March 25, 2008, I received an e-mail from Marc P. Misthal of Gottlieb Rackman & Reisman, P.C. I responded by e-mail the following night. A true copy of the e-mail correspondence is attached as Exhibit 1.
3. Shortly after 3:30 p.m. on April 21, 2008, I returned home to 20 East 9th Street in Manhattan. At my apartment, I found legal papers wedged between the doorknob and the door frame. They did not contain any instructions for filing an electronic case. I do not recall them containing any judge's individual practices.
4. The next day, I received a FedEx package from Gottlieb Rackman & Reisman, P.C. It contained the Individual Practices of Judge George B. Daniels, not Judge Marrero, and did not contain instructions for filing an electronic case.

A true copy of the cover letter from Koenig Pierre of Gottlieb Rackman & Reisman, P.C. is attached as Exhibit 2.

5. A day or two later, I received a mailing from Gottlieb Rackman & Reisman, P.C. This did not contain any electronic filing instructions. There was no cover letter.

6. Attached as Exhibit 3 is a true copy of both sides of a card I had placed in the packaging for The Now Watch.

7. Attached as Exhibit 4 is a printout of the pages of the website, www.thenowwatch.com. The printout shows the text as black on a white background, while the website has reverse and color text.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statement is true and correct.

Dated: June 24, 2008



Adam Rothenhaus

Exhibit 1

Adam Rothenhaus

From: "Adam Rothenhaus" <arothenhau@nyc.rr.com>
To: "Marc Misthal" <mmisthal@grr.com>
Sent: Wednesday, March 26, 2008 10:51 PM
Subject: Re: Infringement of NOW Trademark

Dear Mr. Misthal:

I received your e-mail and the FedEx package. I referred this matter to my attorney. Please direct all further contact to her:

Elizabeth Shieldkret P: 718-997-0290
Attorney at Law F: 718-997-0291
85-86 67th Avenue E: es@eshieldkret.com
Rego Park, New York 11374 W: <http://www.eshieldkret.com>

Yours truly - Adam Rothenhaus

----- Original Message -----

From: Marc Misthal
To: arothenhau@nyc.rr.com ; adam@thenowwatch.com
Cc: Richard Schurin
Sent: Tuesday, March 25, 2008 5:08 PM
Subject: Infringement of NOW Trademark

**VIA FEDERAL EXPRESS
and E-MAIL (arothenhau@nyc.rr.com)**
Mr. Adam Rothenhaus
20 East 9th Street, Apr. 6W
New York, New York 19993

Re: E. Gluck Corp.- Infringement of NOW Trademark

Sir:

Our firm represents E. Gluck Corp. ("Gluck") of Long Island City, New York, with respect to the protection of Gluck's trademarks and related proprietary rights. Gluck is an extremely well-known designer and marketer of watches, and sells its products throughout the world.

Gluck is the exclusive owner of the NOW trademark used for watches. The NOW trademark is the subject of an incontestable registration in the United States Patent and Trademark Office. A copy of our client's registration is enclosed.

We have recently discovered that you have registered the domain name <thenowwatch.com> and, accordingly, that you are using our client's trademark as the dominant part of your domain name. We further understand that the domain name is associated with a website offering watches, including watches bearing the term "now", for sale. A printout of the website associated with <thenowwatch.com> is also enclosed.

We have also been advised that you filed Application Serial No. 78/809,166 to register THE NOW WATCH with the United States Patent and Trademark Office. That application has been refused based on our client's registration.

Be advised that your use of "The Now Watch", as well as your use of the domain name <thenowwatch.com> in connection with the sale of watches with the term "now" on their face, creates confusion as to our client's federally protected NOW mark, and therefore constitutes trademark infringement and unfair competition under

6/23/2008

the Lanham Act, 15 U.S.C. § 1501 et seq. Moreover, since you were aware of Gluck's rights by virtue of the notice provided by the Trademark Office, your infringement is willful. The penalties for willful infringement are severe, and include treble damages and attorney's fees.

Additionally, your registration of the domain name <thenowwatch.com> violates the Anti-Cybersquatting Consumer Protection Act ("ACPA") and your company's registration agreement with GoDaddy.com, Inc., which incorporates the Uniform Domain Name Dispute Resolution Policy ("UDRP"). In particular, your registration and use of the domain name <thenowwatch.com> as described above is actionable under the ACPA and UDRP because your domain name is confusingly similar to a trademark or service mark in which the complainant has rights; because you have no rights or legitimate interests in respect of the domain name; and because <thenowwatch.com> was registered and is being used in bad faith.

On behalf of our client, we request that you immediately cease and desist from using the name "The Now Watch," the domain name <thenowwatch.com> or any other confusingly similar term in connection with watches or the sale of watches. Additionally, we demand that you immediately transfer the domain name <thenowwatch.com> to our client, and that you request GoDaddy.com, Inc. to do the same.

We also advise you that any and all use of our client's trademark, whether as part of an e-mail address, domain name or the like, or in any other way, constitutes infringement of our client's trademark rights, unfair competition and dilution.

Accordingly, we call upon your company to forthwith cease and desist from any act of trademark infringement or unfair competition. Specifically, on behalf of our client, we demand that your company:

- 1) immediately cease use of the phrase "The Now Watch", the NOW mark or any other names similar thereto;
- 2) immediately transfer the domain name <thenowwatch.com> to our client;
- 3) forward to us documentation reflecting the manufacture, importation and sales of the infringing items to date;
- 4) indicate to us the remaining quantity of infringing products currently in inventory under your company's control; and
- 5) provide an accounting to us for all sales of these products made to date, and agree to compensate our client accordingly.

Our client views this matter with considerable concern. In view thereof, we expect your affirmative response, or that of your counsel, by 5:00 P.M. on **Friday, March 28, 2008**.

Please be advised that if you do not cease use of our client's trademark and transfer the domain name, our client has already authorized us to take such steps as may be necessary to protect our client's valuable trademark rights.

This letter constitutes notice of Gluck's trademark rights and is written without waiver of any rights and remedies that Gluck may assert to protect its intellectual property.

Very truly yours,

Marc P. Misthal
GOTTLIEB RACKMAN & REISMAN, P.C.
270 Madison Avenue
New York, NY 10016-0601
(212) 684-3900
(212) 684-3999 (Fax)
Direct e-mail address: mmisthal@grr.com

This message is intended solely for the use of the

6/23/2008

Addressee and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately. Thank You.

6/23/2008

Exhibit 2

GOTTLIEB, RACKMAN & REISMAN, P.C.

JAMES REISMAN
MICHAEL I. RACKMAN
GEORGE GOTTLIEB
BARRY A. COOPER
DAVID S. KASHMAN
ALLEN I. RUBENSTEIN
JEFFREY M. KADEN
AMY B. GOLDSMITH
TIBERIU WEISZ
MARIA A. SAVIO
RICHARD S. SCHURIN

COUNSELORS AT LAW
PATENTS • TRADEMARKS • COPYRIGHTS • INTELLECTUAL PROPERTY

270 MADISON AVENUE
NEW YORK, N.Y. 10016-0601
PHONE: (212) 684-3900 • FACSIMILE: (212) 684-3999
WEB: <http://www.grr.com> • E-MAIL: info@grr.com

DONNA MIRMAN BROOME
BARBARA H. LOEWENTHAL
MARC P. MISTHAL
FRANK D. DECOLVENAERE
STEVEN STERN
YUVAL H. MARCUS

PATENT AGENT
ZOYA V. CHERNINA

OF COUNSEL
DIANA MULLER*

* MEMBER OF THE BAR
OF ARGENTINA ONLY

April 22, 2008

Via FED EX

Adam Rothenhaus
20 E 9th St. Apt. 6W
New York, NY 10003-5944

Re: E. Gluck Corporation v. Adam Rothenhaus (Civil Action No. 08 CV 3466)

Dear Mr. Rothenhaus:

Enclosed please find a Summons, Complaint, the Individual Practices of Judge George B. Daniels and Magistrate Judge Ronald L. Ellis and the 3rd Amended Instructions for Filing an Electronic Case or Appeal in connection with the above referenced matter.

Sincerely,

GOTTLIEB, RACKMAN & REISMAN, P.C.


Koenig Pierre
Litigation Paralegal

RSS/kp
0172/510
Encls.

Exhibit 3

*Welcome to The NOW Watch Community where
the time is always NOW.*

We hope to bring more presence to your life.

Sincerely -



Adam Rothenhaus, founder of The Now Watch

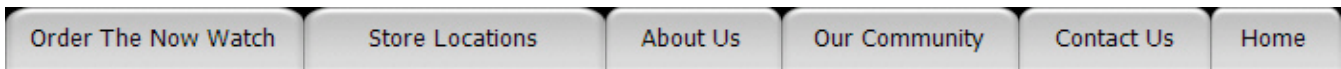
www.thenowwatch.com

-pass it on-

Exhibit 4



Because the Time Is Always
Now!



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Now!

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Our Original Now Watch

\$45.00 *plus shipping & handling*

Product Description:

Our Original Now Watch brings our concept to life for men, women, and children. We've carefully designed our Original Now Watch to find a happy medium of style and practicality for all people and activities.

This watch features a black leather band and a silver colored case with a stainless steel back. It is the first of a line of Now Watches that will exhibit a wide variety of face designs, band styles, colors, and price points to fit our customers' more specific wants and needs. Please contact us with any suggestions.

Please Click Below to Begin Ordering Your Original Now Watch!

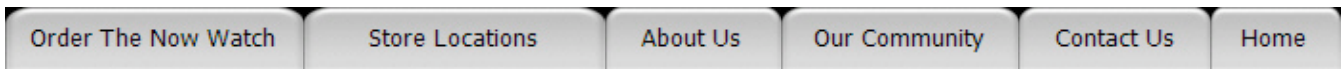
Order Now

Note: For **corporate gifts** or other **bulk orders** designed to focus a large group of people on the present moment... please contact us at info@thenowwatch.com to initiate special arrangements.

Return Policy: If for any reason you are not completely satisfied with your purchase you may return your Now Watch within 21 days of your order and receive a full refund (less shipping and handling) credited to your credit card within one business day of when we regain possession of what you return to us. In this circumstance, please contact us to assure personal attention to your return.



**Because the Time Is Always
Now!**



Store Locations

If you are in the New York Metropolitan area and want to see Our Original Now Watch in person... please check out:

Brooklyn

1:46 Watch Repair and Design Collective

146 North 7th Street
Brooklyn, NY
(By Bedford Avenue stop on the L train in Williamsburg) [Map It](#)

Néda

A Contemporary Designer Boutique
There are two super cool stores in Brooklyn:

- Cobble Hill at 302 Court Street [Map It](#)
- Park Slope 413A Seventh Avenue [Map It](#)

Manhattan

Christopher's

7 Greenwich Avenue
New York, NY
(Corner of Greenwich Avenue and Christopher Street in the West Village)
[Map It](#)

Westchester

Beginnings Bleus

575 Main Street
Armonk, New York [Map It](#)

Are you interested in showing The Now Watch product line in your store, boutique, gift shop, or e-tail site?

From New Age shops and Yoga outlets to mainstream shopping malls, The Now Watch product line seeks a diverse range of purchasing opportunities for our customers.

If you believe any of the NOW Watch products within our line are a good fit for your retail business, please contact us at info@thenowwatch.com to join our expanding Now Watch Network.

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[Store Locations](#)

[About Us](#)

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[Home](#)

[Our Philosophy](#) | [Founder's Story](#) | [What's In Development?](#)

Our Philosophy

The Now Watch mission is to bring more presence to people's lives.

It's a simple goal but in a world where we are so busy and caught up trying to get things done, we rarely pause and take a moment to just be where we are right here and now. However, when we do appreciate the moment, we often feel a relaxing sensation, followed by an ability to focus and actually get more done in less time. In a sense, that's because it's always now. And when connected to the present moment, we are able to use our time to its fullest potential.

We've decided that a watch or a clock with the word NOW appearing prominently on the face is the perfect stimulus to help us access more presence in our lives. It works so easily... when we check our NOW watches and clocks, we'll find out the time of day as usual but will also be reminded that it is the present moment initiating a collision of the mystical with the utterly practical. Many people find it inspiring, some soothing, still others motivating, while others just laugh... but that's what make our timepieces what we consider to be functional pop-art left wide open to interpretation.

We believe we've hit on a radically simple concept that delivers a message in a fun, cool, and affordable way. Since the present moment is fundamental to every human, in every walk of life, our long term vision is to spread our products all around the world. Here are some sample translations into other languages:

Spanish - **Ahora**, Dutch - **Nu**, German - **Jetzt**, Greek - **τώρα**, Italian - **Ora**
Portuguese - **Agora**, Russian - **Теперь**, Chinese - **现在**

Our core value is simplicity which leads us to one final simple idea. We believe that the present moment is the greatest gift that there is here on earth. Therefore, our products seek to become the perfect gift people can buy for themselves and share with others worldwide.

Please contact us to bring more presence to your life and your community.

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[Home](#)

[Our Philosophy](#) | [Founder's Story](#) | [What's in Development?](#)

Founders Story

Perhaps The Now Watch always resided deep within its founder, Adam Rothenhaus, a lawyer, writer, philosopher, and entrepreneur based in New York City.

Throughout his youth Adam repeatedly heard great athletes, great artists, and great people in all walks of life attribute their good fortune to their ability to remain focused on the present moment. Yet he grappled to fully understand why. Then in 1996, after spending much of his early life dwelling on his past and worrying about his future, a profoundly simple truth struck him and explained the essence of their success.

It always was, always is, and always will be the present moment.

He decided to put this perspective to work and soon began harvesting the infinite potential of the present moment. In doing so he gained access to an unlimited resource of sublime beauty, indescribable joy, and lasting inner peace. He determined that this resource was the key to a happy, fulfilling, and successful life. But much more often than not... he just forgot about it.

In 2001, he played around inscribing the word NOW on a clock to remind himself of this resource. It worked, and he slowly began to share the idea for his reminder with others as a mechanism to bring more presence into more human lives. By 2006, he officially founded The Now Watch.

The rest continues to be an unfolding story of accumulating present moments...

Please feel free to contact Adam at adam@thenowwatch.com.

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Store Locations

About Us

Our Community

Contact Us

Home

Our Philosophy | Founder's Story | **What's in Development?**

Products in Development



What's In Development?

The Now Watch vision seeks to develop a full line of watches, wall clocks, desk clocks, and even calendars to help bring more presence to people's lives.

Wherever a measurement of time intersects with the present moment we see an ideal opportunity to remind people that the time is always NOW.

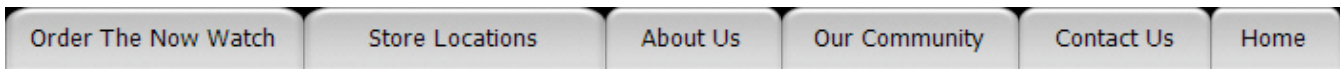
Imagine now clocks hanging on the walls of our conference rooms, now desk clocks on our countertops, and now calendars pinned to our bulletin boards. All these reminders of the present moment are already in development.

Please contact us at info@thenowwatch if you want to help our potential materialize in any capacity. That includes new ideas, product design, production capabilities, capital investment, or any other developmental needs that may come to your mind.

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Because the Time Is Always
Now!



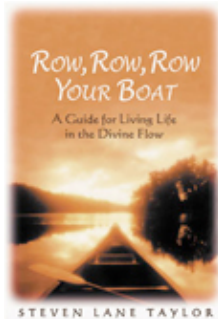
Our Community

We are pleased to be developing a growing Now Watch community to show our appreciation for all those who share the vitality springing forth out of the present moment.

The simple goal of our community is to link together people and resources that can help deepen the human connection to NOW.

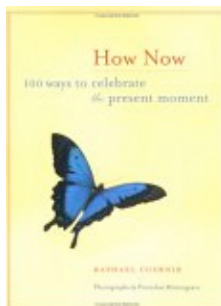
Please contact us at info@thenowwatch.com if you'd like to be what we'll consider a friend The Now Watch.

Featured Friends of The Now Watch



Steven Lane Taylor is the Author of **"Row Row Row Your Boat,"** a profoundly simple guide to living in harmony with life's divine flow. We love its simplicity and call to pay attention to what's happening in your life right Now. We also love walking down the street singing this little well-known jingle. Try it, singing softly to yourself, and see how quickly your perspective changes. Please check out www.rowrowrow.com to learn more about Steven, his book, his talks, and his workshops.

<----- Buy This Book on Amazon.com



Raphael Cushnir is a popular contributor to O, the Oprah magazine. He is the author of several books including **"How Now: 100 Ways to Celebrate the Present Moment,"** a well rounded mix of suggestions to bring more presence to people's lives making it a Now Watch favorite. Please check out www.hownow100.com to learn more about Raphael's book as well as www.innermanagement.biz for more about his talks,

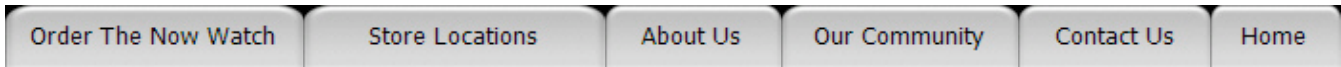
training programs, and consultations.

<----- Buy This Book on Amazon.com

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Contact Us

For questions, comments, orders, or anything else please contact us at:

info@thenowwatch.com

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